88-1246

Supreme Court, U.S.
FILED
JAN 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

United States supreme Court

October Term 1988

In re Robert Boris Beachboard

On Petition for Writ of Injunction or

Mandamus to the United States Court of

Appeals for the Seventh Circuit

Petition

Solicitor General,

Department of Justice,

Washington, D. C. 20530

633-2201

Attorney for United States Employees

ROBERT BORIS BEACHBOARD

Post Office Box 068132

Chicago

Illinois

60606-8132

Attorney

for

Petitioner

QUESTION PRESENTED FOR REVIEW

The in banc rehearing petition must be heard?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW . . . i

TABLE OF AUTHORITIES v

STATEMENT OF JURISDICTION 2

RELEVANT STATUTORY PROVISIONS . . . 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 3

PROPOSITION I:

THE UNITED STATES SUPREME COURT ISSUES COMMANDS IN VARIOUS FORMS. 3

PROPOSITION II:

ALTHOUGH CERTIORARI WRITS ARE NUMEROUS, MANDAMUS WRITS ARE ALSO ISSUED. 3

PROPOSITION III:

MANDAMUS IS USED IN CASES INVOLVING JUDICIAL EMPLOYEES. 4

TABLE OF CONTENTS

Page

CONCLUSION 5

CERTIFICATE OF SERVICE 6

APPENDIX A 1a

MARCH 7, 1988 ORDER OF THE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
ILLINOIS 1a

APPENDIX B 11a

MARCH 16, 1988 ORDER OF THE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
ILLINOIS 11a

APPENDIX C 22a

JULY 12, 1988 ORDER OF THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT 22a

APPENDIX D 24a

SEPTEMBER 30, 1988 ORDER OF THE
UNITED STATES COURT OF APPEALS

TABLE OF CONTENTS

Page

FOR THE SEVENTH CIRCUIT 24a

APPENDIX E 26a

OCTOBER 11, 1988 ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT 26a

APPENDIX F 28a

OCTOBER 4, 1988 MOTION OF ROBERT BORIS BEACHBOARD 28a

TABLE OF AUTHORITIES

CASES

	Page
AMERICAN TRUCKING ASSOCIATION, INC. v. GRAY. 108 S.Ct. 2	v, 3
appellant Robert Boris Beachboard -vs- The Trustees of Columbia University in the City of New York appellee	v, 22a, 24a, 26a, 28a
BUCOLO v. ADKINS, CHIEF JUSTICE, 424 U. S. 641	v, 4
CONNOR v. COLEMAN, JUDGE, UNITED STATES COURT OF APPEALS,	

TABLE OF AUTHORITIES

CASES

	Page
440 U. S. 612	v, vi, 4
CONNOR v. COLEMAN, UNITED STATES CIRCUIT JUDGE, 425 U. S. 675	vi, 4
DEEN v. HICKMAN, CHIEF JUSTICE, SUPREME COURT OF TEXAS. 358 U. S. 57	vi, 4
Ex parte Cogdell et al. 342 U. S. 805	vi, 4
EX PARTE IN THE MATTER OF HARLEY-DAVIDSON MOTOR COMPANY ET AL.,	

TABLE OF AUTHORITIES

CASES

	Page
PETITIONERS.	
259 U. S. 414	vi, vii, 3
EX PARTE KUMEZO KAWATO.	
317 U. S. 69	vii, 3
GENERAL ATOMIC CO. v. FELTER, JUDGE,	
436 U. S. 493	vii, 4
IN RE MERCHANTS' STOCK AND GRAIN COMPANY ET AL., PETITIONERS.	
223 U. S. 639	vii, 3
In re Robert Boris Beachboard	cover,

TABLE OF AUTHORITIES

CASES

	Page
	vii, 1
Laurel v. United States Court of Appeals for the Fifth Circuit. 447 U. S. 932	viii, 3
LUCAS v. TOWNSEND. 108 S.Ct. 1763	viii, 3
MATTER OF CHRISTENSEN ENGINEERING COMPANY. 194 U. S. 458	viii, 3, 4
Times Mirror Co. v. Superior Court of California, County of San	

TABLE OF AUTHORITIES

CASES

	Page
Diego. 56 LW 3830	viii, ix, 3
United States v. United States District Court for the Northern District of Texas, 371 U. S. 18	ix, 4

STATUTES

THE CONSTITUTION OF THE UNITED STATES. AMENDMENTS TO THE CONSTITUTION. Art. V.	ix, 2

TEXTBOOKS

George V. Burke, "MANDAMUS AS APPROPRIATE REMEDY TO CONTROL

TABLE OF AUTHORITIES

TEXTBOOKS

Page

ACTION OF FEDERAL COURT IN CIVIL CASE - SUPREME COURT CASES," 56 L Ed 2d 1203 . . . . . ix, x

Robert L. Stern Eugene Gressman Stephen M. Shapiro, Supreme Court Practice, sixth edition (1986) x

United States supreme Court

October Term 1988

No._____

In re Robert Boris Beachboard

On Petition for Writ of Injunction or Mandamus to the United States Court of Appeals for the Seventh Circuit

---

Petition

Thomas

Franklin

Strubbe

clerk

Kenneth

Francis

Ripple

judge

STATEMENT OF JURISDICTION

October 11, 1988

RELEVANT STATUTORY PROVISIONS

THE CONSTITUTION OF THE UNITED STATES. AMENDMENTS TO THE CONSTITUTION. Art. V.

STATEMENT OF THE CASE

25 copies of an in banc rehearing petition were illegally withheld. The clerk returned 4 copies of a request for in banc reconsideration of the October 11, 1988 order with a letter: "Future motions will not be returned at government expense and will be disposed of." THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA TITLE 28 §1332

The relief sought is not available in any other court because no other court has jurisdiction.

REASONS FOR GRANTING THE PETITION

PROPOSITION I

THE UNITED STATES SUPREME COURT ISSUES COMMANDS IN VARIOUS FORMS.

AMERICAN TRUCKING ASSOCIATION, INC. v. GRAY. 108 S.Ct. 2, LUCAS v. TOWNSEND. 108 S.Ct. 1763, Times Mirror Co. v. Superior Court of California, County of San Diego. 56 LW 3830

PROPOSITION II

ALTHOUGH CERTIORARI WRITS ARE NUMEROUS, MANDAMUS WRITS ARE ALSO ISSUED.

Laurel v. United States Court of Appeals for the Fifth Circuit. 447 U. S. 932, EX PARTE IN THE MATTER OF HARLEY-DAVIDSON MOTOR COMPANY ET AL., PETITIONERS. 259 U. S. 414, EX PARTE KUMEZO KAWATO. 317 U. S. 69, IN RE MERCHANTS' STOCK AND GRAIN COMPANY ET AL., PETITIONERS. 223 U. S. 639, MATTER

OF CHRISTENSEN ENGINEERING COMPANY. 194 U. S. 458

PROPOSITION III

MANDAMUS IS USED IN CASES INVOLVING JUDICIAL EMPLOYEES.

GENERAL ATOMIC CO. v. FELTER, JUDGE, 436 U. S. 493, BUCOLO v. ADKINS, CHIEF JUSTICE, 424 U. S. 641, DEEN v. HICKMAN, CHIEF JUSTICE, SUPREME COURT OF TEXAS. 358 U. S. 57, United States v. United States District Court for the Northern District of Texas, 371 U. S. 18, CONNOR v. COLEMAN, JUDGE, UNITED STATES COURT OF APPEALS, 440 U. S. 612, CONNOR v. COLEMAN, UNITED STATES CIRCUIT JUDGE, 425 U. S. 675, Ex parte Cogdell et al.
342
U.
S.
805

CONCLUSION

The United States Court of Appeals for the Seventh Circuit should be enjoined from refusing to hear in banc the expanded Petition for Rehearing, with Suggestion for Rehearing In Banc copies within 30 days after issuance of a writ.

ROBERT
BORIS
BEACHBOARD
Post
Office
Box
068132
Chicago
Illinois
60606-8132
ATTORNEY
FOR
PETITIONER

APPENDIX A

Minute Order Form

(rev. 4/87e)

UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION

Name of Assigned Judge or Magistrate	James H. Alesia
Sitting Judge/Mag. If Other Than Assigned Judge/Mag.	
Case Number	88 C 808
Date	March 7, 1988
Case	BEACHBOARD v. TRUSTEES OF

Title	COLUMBIA UNIVERSITY

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) ___ Judgment is entered as

follows: (2) | X| [Other docket entry:]

| | |

On the Court's own motion, this case

is DISMISSED WITHOUT PREJUDICE.

(3) | | Filed motion of [use listing in "MOTION" box above].

(4) | | Brief in support of motion due_____.

(5) | | Answer brief to motion due__.
Reply to answer brief due___.

| | Hearing

(6) | | ____ on__set for_at_.

| | Ruling

(7) ___ Status hearing ___ held ___

___

continued to ___ set for

_____ ___

___

___ reset for_____at_____.

_____

___ ___

(8) ___ Pretrial conference ___ held

___

___ ___

___ set for ___ reset for_.

_____ _____

at_____.

___ ___ ___

(9) ___ Trial ___ set for ___ reset

___ ___

for_____at_____.

___

(10) ☐ Bench trial ☐ Jury
trial ☐ Hearing held and
continued to _____ at ____.

(11) ☐ This case is dismissed ☐
without ☐ with prejudice
and without costs ☐ by
agreement ☐ pursuant to
☐ FRCP 4(j) (failure to

serve) | | General Rule 21

(want of prosecution) | |

FRCP 41(a)(1) | | FRCP

41(a)(2)

(12) |X| (For further detail see |X|

order on the reverse of

| | order attached to the

original minute order form.)

	No notices required.
	Notices mailed by judge's staff.
	Notified counsel by telephone.
X	Docketing to mail notices.
	Mail AO 450 form.
	Copy to judge magistrate

courtroom deputy's initials	cw

	number of notices
MAR 8 - 1988	date docketed
	docketing dpty.

		initials
Date/time		date mld.
received in		notices
central		mailing
Clerk's		dpty.
Office		initials

Document #

(Reserved for use by the Court)

ORDER

On January 27, 1988, plaintiff Robert Boris Beachboard ("Beachboard") filed a suit against the Trustees of Columbia University ("Trustees"). It is obvious from the face of his three paragraph, twenty-eight word complaint that Beachboard read Fed. R. Civ. P. 8(a) before he filed the complaint. Paragraph 1 alleges that this Court has diversity jurisdiction over Beachboard's dispute with the Trustees. See 28 U.S.C. 1332. Tracking the language of rule 8(a), paragraph 2 alleges that "the pleader is entitled to relief". Finally, Beachboard demands judgment in the amount of $ 11,000.00. Although most courts welcome brevity in pleadings filed before them, all pleadings must sufficiently set forth the factual basis for relief. While we

recognize that the Trustees may know the nature of the dispute of which Beachboard complains, Beachboard's complaint could in no way be the source of such knowledge. Consequently, we find that Beachboard's complaint fails to comply with the notice pleading requirements of Fed. R. Civ. P. 8(a). Accordingly, Beachboard's complaint is dismissed without prejudice. In the event that Beachboard refiles his complaint, we strongly urge him to retain a private attorney or to obtain assistance from a legal aid organization.

James H. Alesia

JAMES H. ALESIA

United

States

District

Judge

APPENDIX B

Minute Order Form

(rev. 4/87e)

UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION

Name of Assigned Judge or Magistrate	James H. Alesia
Sitting Judge/Mag. If Other Than Assigned Judge/Mag.	
Case Number	88 C 808
Date	March 16, 1988
Case	BEACHBOARD v. TRUSTEES OF

Title	COLUMBIA UNIVERSITY

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) ___ Judgment is entered as

follows: (2) |X| [Other docket entry:]

|_|

On the Court's own motion, this case is dismissed for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). This dismissal is without prejudice.

Pursuant to Fed. R. Civ. P. 15(a), plaintiff must seek leave of court before he may refile this action.

(3) ☐ Filed motion of [use listing in "MOTION" box above].

(4) ☐ Brief in support of motion due_____.

(5) ☐ Answer brief to motion due__.
Reply to answer brief due___.

(6) ☐ ☐ Hearing on__set for_at_.
☐ Ruling

(7) ☐ Status hearing ☐ held ☐
continued to ☐ set for _____
☐ reset for_____at_____.

(8) ☐ Pretrial conference ☐ held ☐ set for ☐ reset for .

at .

(9) ☐ Trial ☐ set for ☐ reset for at .

(10) ☐ ☐ Bench trial ☐ Jury trial ☐ Hearing held and continued to at .

(11) ☐ This case is dismissed ☐ ☐ ☐

without ☐ with prejudice

and without costs ☐ by

agreement ☐ pursuant to

☐ FRCP 4(j) (failure to

serve) ☐ General Rule 21

(want of prosecution) ☐ ☐

FRCP 41(a)(1) FRCP

41(a)(2)

(12) (For further detail see

order on the reverse of

order attached to the

original minute order form.)

	No notices required.
	Notices mailed by judge's staff.
	Notified counsel by telephone.
X	Docketing to mail notices.
	Mail AO 450 form.
	Copy to judge magistrate

courtroom deputy's initials	CW

	number of notices
MAR 17 1988	date docketed
	docketing dpty. initials
Date/time received in central Clerk's Office	date mld. notices mailing dpty. initials

Document #

(Reserved for use by the Court)

ORDER

*U.S.

GPO:

1987-742-810/1068

APPENDIX C

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

July 12 , 19 88 .

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

ROBERT BORIS BEACHBOARD, Plaintiff-Appellant,	) Appeal from
No. 88-1618 vs.	) the United
THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, Defendant-Appellee.	) States District Court for the Northern District of Illinois,

Eastern
Division.
No. 88 C 808
James H.
Alesia,
Judge

O R D E R

The clerk of this court is directed to file instanter the tendered copies of the brief and required short appendix of the appellant.

Upon review of the record and brief of plaintiff-appellant, this court summarily AFFIRMS the district court's dismissal of plaintiff's case for failure to state a claim upon which
relief
may
be
granted.
(t)

APPENDIX D

4

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

September 30 , 19 88 .

Before

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. _____

Hon. _____

ROBERT BORIS BEACHBOARD,) Appeal from
Plaintiff-Appellant,) the United
No. 88-1618 vs.) States
THE TRUSTEES OF COLUMBIA) District
UNIVERSITY IN THE CITY OF) Court for the
NEW YORK,) Northern
Defendant-Appellee.) District of
Illinois,
Eastern

Division.

No. 88 C 808

JAMES H.

ALESIA, Judge

This matter comes before the court for its consideration of the "PETITION FOR REHEARING, WITH SUGGESTION FOR REHEARING IN BANC" filed herein on July 30, 1988 by pro se appellant.

This petition is late, and permission to file it is therefore DENIED on that basis.

(t)

APPENDIX E

United States Court of Appeals 4

For the Seventh Circuit

Chicago, Illinois 60604

October 11 , 19 88 .

Before

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. _____

Hon. _____

ROBERT BORIS BEACHBOARD, Plaintiff-Appellant, No. 88-1618 vs. THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, Defendant-Appellee.	) Appeal from) the United) States) District) Court for) the Northern) District of Illinois, Eastern Division.

No. 88 C 808

JAMES H. ALESIA, Judge

This matter comes before the court for its consideration of the "MOTION" filed herein on October 4, 1988 by pro se appellant, which the court construes as a motion to reconsider this court's order of September 30, 1988.

On consideration thereof, IT IS ORDERED that said motion is DENIED.

(t)

APPENDIX F

United States Court of Appeals for the Seventh Circuit

appellant Robert Boris Beachboard -vs- The Trustees of Columbia University in the City of New York appellee

88-1618

motion panel motion

On July 12, 1988 an AFFIRMS O R D E R was made in the above entitled case. On July 25, 1988 25 copies of Petition for Rehearing, with Suggestion for Rehearing In Banc were delivered to the office of the clerk and stamped RECEIVED. By letter dated 7/26/88 Pro Se Clerk returned these with the comment: "The covers mention a page five when indeed only the covers were tendered to this court." This Petition for Rehearing, with Suggestion for Rehearing In Banc was only one page in length. "fifth page"

was mentioned because CIRCUIT RULE 40 states that the petition shall include a table of cases with reference to the pages of the brief where they are cited. On July 29, 1988 25 copies of an expanded Petition for Rehearing, with Suggestion for Rehearing In Banc were delivered to the office of the clerk. Because of Pro Se Clerk 7/26/88 directives 4 copies of a motion for leave to file were also delivered. By letter dated August 3, 1988 JoAnne Grabowski issued a mandate in the case. 4 copies of a Motion to stay this mandate were delivered and stamped AUG 4 1988. On September 30, 1988 KENNETH F. RIPPLE made an order in this case stating: "This petition is late, and permission to file it is therefore DENIED on that basis." On the same day he made an order that denied the Motion to stay the mandate. The petition was not late,

and the mandate should be stayed. Motion is presently made for leave to file the Petition for Rehearing, with Suggestion for Rehearing In Banc copies delivered July 29, 1988. Motion is also made to recall the mandate and to have the original record transmitted to the office of the clerk of the United States Court of Appeals for the Seventh Circuit.